

LAKE COUNTY BOARD of ADJUSTMENT
May 10, 2017
Lake County Courthouse Commissioners Office (Rm 211)
Meeting Minutes

MEMBERS PRESENT: Don Patterson, Frank Mutch, Steve Rosso, Merle Parise, Mary Jensen

STAFF PRESENT: Jacob Feistner, Rob Edington, Wad Humphries, Lita Fonda, Wally Congdon

Frank Mutch called the meeting to order at 4:02 pm

NEW MOUNTAIN HEIGHTS II CONDITIONAL USE EXTENSION—UPPER WEST SHORE (4:02 pm)

Rob Edington introduced Dave DeGrandpre and Jim Kuhlman, representatives of the project, and presented the staff report. (See attachments to minutes in the May 2017 meeting file for staff report.) An additional public comment had been received since the staff report and had been handed out. (See attachments to minutes in the May 2017 meeting file for handout.)

Frank asked for clarification on a modification mentioned on pg. 4 of attachment 5, which was the original conditional use approval. Rob explained the timeline for the roads in 22.a had been modified to 7/31/2017 per attachment 4, which coincided with the subdivision.

Dave DeGrandpre of Land Solutions was in attendance with Jim Kuhlman, a partner in New Mountain Heights. Dave reviewed some history of the subdivision. He listed accomplishments or momentum achieved for the subdivision, including progress on clearing for fire safety and right-of-way work, the hiring of an engineer to design roads, stormwater control systems, erosion control systems, the design of a helicopter pad for safety and the designs of a fire suppression system/water tank and hydrant system. DEQ approval had been received for water supply, wastewater and stormwater systems. The developer had managed noxious weeds and maintained roads on the property. So there had been activity and work towards the project.

Dave said the purpose of the conditional use process was originally for the disturbance of slopes over 25%. He thought that was to make sure erosion was reduced or mitigated and managed, the visual impacts with big cuts and fills were not unsightly from the highway or adjacent properties, those cuts and fills were revegetated and stormwater was managed so Flathead Lake or surface water weren't impacted. Very extensive plans were made and the developer had taken significant efforts to address those issues. He assured the Board that those issues had been found and satisfactorily addressed by the staff and by the Board. With the subdivision, it covered some of the same things, such as fire safety, impacts on water quality and visual impact, and those things had also been addressed.

They weren't proposing modification to the approvals, which had many conditions. They were simply looking for a few more years.

Jim Kuhlman referred to some of the harvesting done by Stoltz. From a safety standpoint and from a beauty standpoint as well, it was a world apart from what it was 10 or 15 years ago. The timing of the subdivision wasn't very good, given how the economy and market changed. Dave said if the request for the extension was not granted, the significant work done in the past would be tossed out of the window. This was a significant component of the project.

Steve asked if over the years, erosion, natural occurrences or even the logging access had changed the slopes that were going to be modified or had changed the conditions that would cause the engineers to have to relook at the road. Dave didn't think there was much change but couldn't say that with utter certainty. Jim commented the road was actually improved. Stoltz regaveled much of it several years ago when they needed to haul on it and needed it in good condition. Steve checked for things like slides in steep areas. Jim replied no. There was good substantial growth of vegetation. He didn't see a potential for a slide.

Steve referred to a comment in a letter about work that had been done with gates and weeds. Another letter, from Elaine Wilson, questioned whether that's an accurate portrayal of what was going on there. Jim thought the letter might refer to the secondary emergency access road that was not on [the subject] property. They paid for an easement through the Wilson property. She was correct that they had not maintained it. He didn't think they'd driven on it since 2007. Dave showed the location of Haystack Road. They would develop that as a secondary or emergency access road when the subdivision was developed. Jim said there was only one gate. They had moved it to the actual property line and kept it padlocked. They'd had cases of people going up and cutting trees and doing vandalism and so forth so that was why they had the gate there. It was a safety factor. Steve noted the 3/24/17 letter referred to maintenance on the property, not the adjacent property with the access road. Frank checked that Haystack Road was private and maintained by the owner of the road if it was maintained.

Merle asked about the water and sewer approval and state approval. Were they grandfathered in to old requirements or would that have to be addressed again at the state level? Dave clarified that both the state and county had a role in the review of water supply, stormwater and wastewater systems and solid waste, and that no additional process with DEQ or the County would be necessary.

Rob noted that the Planning Dept. would recommend that this be the final extension for the conditional use. He also confirmed that water, sewer, weeds and so forth would be reviewed under subdivision review. The Planning Dept. was requesting a determination from the Board in regards to the slope disturbance. Jacob clarified the actual extension for the preliminary plat would go to the Commissioners. Frank checked that if it passed the deadline, they'd have to start over and resubmit the whole package. Jacob explained that in the 3 years they wouldn't have to sell lots but they would have to reach final plat.

Frank asked about the timing of the installation of roads and driveways. Jim said the road system they designed was the current road system historically used within the subdivision. They wouldn't disturb additional grounds from the standpoint of putting in the subdivision road system itself. From the slope standpoint, the greatest slope was a maximum of 10%. Frank said if lots didn't sell, the land wouldn't be opened up. He thought that addressed Elaine Wilson's concern.

Public comment opened: None offered. *Public comment closed.*

Motion made by Frank Mutch, and seconded by Mary Jensen, to approve the conditional use subject to the existing conditions and terms and also the new conditions that extended the date.

Jacob asked if they wanted to limit it to this 3-year extension or leave it open for additional extensions. They were asking for three years. Did the Board want to leave it open for them to come back for another three? Frank and Mary were in favor of more extensions if needed. Mary said they'd done the work. They should be allowed to come before the Board of Adjustment to reevaluate that and extend further. Rob said one consideration was that Lake County was considering revising the current zoning districts, including Upper West Shore, so the disturbance of slopes might have different language at that time. Steve said another consideration was the reality that the original permit allowed one 1-year extension and here they were, 10 years later. He was interested in whether the applicants felt confident that this 3-year extension was sufficient for their needs. Dave said in his view, they should have the right to ask for an extension. If conditions on the ground or the rules changed, that request could be denied. He would ask that the language for an outright prohibition not be included. Jim described that they had invested several million dollars in this project and they continue to make investment. They were committed to doing all that they could on a first class basis and conforming with what the County required them to do. [The project] had their time, attention and also their billfold.

Discussion between the Board and staff clarified that in the materials as written, it already allowed them to come back. Staff wondered if the Board wanted to say this was the last extension. Jacob said he was putting the idea out there since given they had deadlines, what did those mean in this case? He wanted it clear whether this was saying to come back and see us if you needed more time in 3 years or if this was saying 3 years was it. Don said it didn't say that either way. Mary said if you had an extension, you could come back and ask for another one and you could be denied or accepted.

Motion carried, all in favor.

CHERRY PINES CONDITIONAL USES (NEW & TABLED)—EAST SHORE
(4:41 pm)

Wade Humphries presented the staff report. (See attachments to minutes in the May 2017 meeting file for staff report.) The original item had been tabled at the last meeting.

Responding to questions from the Board, Wade clarified the cabin in attachment #3 was the Montana cabin, back and front. On attachment #2, it was in the NW quadrant of the northern lot. He thought they were going to keep what they had [of the cabin], which was about 800 square feet, and with the addition it would be about 2500 square feet. The addition would be in the front portion of this cabin.

Tiffani Murphy, Carstens agent for the project clarified one additional bedroom would be added. Mary checked with Tiffani that the bathroom was a laundry room as well. Tiffani added that they applied to update the septic system. Construction would not be completed until after the new system was installed.

Frank commented on the conditions and terms on pg. 13. In condition #3, 'existence' replaced 'exists'. Wade clarified on condition #4 that this review was only for the 2 conditional uses. In condition #5, Frank confirmed with Wade that they had an accommodations license, which they first received in 2010. Frank changed 'a Montana' to 'a current Montana' in condition #5. Steve returned to condition #3 and verified that 'property permitting' was intended to be 'proper permitting'.

Wade clarified for Steve on condition #2 that Commissioner approval was specifically called out in the zoning regulations for that item.

Tiffani thought things were covered at the last meeting [in April]. She reiterated that Cherry Pines purchased this property and was not involved with the original structure, building and rentals. They were trying to make it right and bring things into compliance.

Steve asked about the scope of the expansion in order to judge impacts to the neighborhood. In response to questions, Tiffani described that there was currently only one bedroom in the cabin proposed for expansion. The other cabins had much larger square footage. She would have to check to find out how many beds each of those had. Steve thought an additional 1600 square feet was more than enough for a laundry room and a bedroom. Tiffani said the existing bedroom would be broadened as well and mentioned the laundry room/ bathroom facility. The living area would be expanded. The other two cabins weren't changing and were on the other lot. The other structure on this lot was residential for the owners' personal use, which was seasonal, not year-round. They came down and managed the cherry orchards. Jacob said they would have to get state approval to rent the 4th unit in response to Frank's question. Steve didn't think this sounded like a tremendous increase in the rental capacity of the property. Tiffani said they were expecting a maximum of 2 extra people in that cabin.

Jacob pointed to the attachment that showed the state license. He read the portion that specified the limit on the number of guests in each cabin. The group clarified that this was attachment 6 and that the total number of maximum guests would change from 14 to 16. Frank checked that if this was approved, it legalized the cabin that was built after the zoning. Jacob said that was what the zoning conformance permit referenced in condition

#3 would do. [The conditional uses] would legalize the use of it. The zoning conformance legalized its physical presence.

Frank noted there were no public present to comment.

Motion made by Steve Rosso, and seconded by Don Patterson, to approve the conditional uses based on the findings of facts as presented by the staff and conditions as corrected. Motion carried, all in favor.

MINUTES --Deferred per agenda

OTHER BUSINESS (5:06 pm)

Jacob provided the revised bylaws for signing.

Frank Mutch, chair, adjourned the meeting at 5:08 pm.